



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Travis A. Voyles
g Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
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VIRGINIA:

IN THE DEPARTMENT OF ENVIROMENTAL QUALITY

**In Re: Eric S. Baker and Rick's Stop & Shop Inc.
("Named Party(ies)")**

ORDER

This cause came to be heard on January 24, 2023, via conference call, before Presiding Officer Michelle Callahan. Daniel Burstein was the agency advocate.

Pursuant to § 10.1-1186 of the Code of Virginia, the Director of the Department of Environmental Quality ("DEQ") has the authority to issue special orders that may include injunctive relief and civil penalties.

I have reviewed the Record, Exhibits, and the Presiding Officer's Recommended Findings of Fact and Conclusions of Law in the above-referenced matter. Accordingly, I adopt those Recommended Findings of Fact and Conclusions of Law and incorporate them into this Order.

Pursuant to my authority under Va. Code § 10.1-1186, I order the Named Party(ies) to comply with (1) the State Water Control Law, Va. Code § 62.1-44.2 et seq., and (2) the Underground Storage Tanks: Technical Standards and Corrective Action Requirements, 9 VAC 25-580-10 et seq.

Specifically, I order Rick's Stop & Shop Inc. to complete the following with respect to Underground Storage Tanks ("USTs") at Rick's Stop & Shop Inc., located at 10500 New Kent Hwy, New Kent, VA 23124:

	Required Action	UST No(s).	Due Date
X	Provide release detection for the UST system as required in 9VAC25-580-140.	1C, 2C, 3, and 4	Within 90 days of the date of this Order
X	Provide records for the two (2) most recent consecutive months in accordance with 9VAC25-580-120 demonstrating compliance with all release detection requirements as required in 9VAC25-580-180.	1C, 2C, 3, and 4	Within 90 days of the date of this Order
X	Provide records demonstrating the automatic line leak detector has been tested within the past 12 months, presenting passing results in accordance with the performance requirements set forth in 9VAC25-580-130 and 170.	1C, 2C, 3, and 4	Within 90 days of the date of this Order
X	Provide records demonstrating line tightness testing has been completed within the past 12 months, presenting passing results in accordance with the performance requirements set forth in 9VAC25-580-130 and 170.	1C, 2C, 3, and 4	Within 90 days of the date of this Order
	Provide records demonstrating the proper repair and/or replacement of electronic and mechanical components of a UST system upon failed testing results, is in accordance with 9VAC25-580-110.		
	Provide records demonstrating that the install and/or repair of the necessary equipment to provide adequate corrosion protection on the UST system is in accordance with 9VAC25-580-90 and 9VAC25-580-110.		
	Complete cathodic protection system testing in accordance with 9VAC25-580-90 and submit copies of these cathodic protection system test results in accordance with 9VAC25-580-120.		
	Submit documentation that the impressed current cathodic protection system is inspected every 60 days in accordance with 9VAC25-580-90(3).		
X	Provide records demonstrating periodic testing and inspections of spill/overfill prevention equipment and containment sumps has been performed within the past 12 months in accordance with 9VAC25-580-82.	1C, 2C, 3, and 4	Within 90 days of the date of this Order
X	Provide records demonstrating tank release detection equipment testing has been performed in accordance with 9 VAC 25-580-130(A)(3)(a)	1C, 2C, 3, and 4	Within 90 days of the date of this Order
	Submit an updated Notification for the UST system in accordance with 9VAC25-580-70.		
	Submit documentation demonstrating financial responsibility in accordance with 9VAC25-590-10 <i>et seq.</i>		

	Submit training documentation for all the Class A, B, and C operators, including a current list of operators and written instructions or procedures for Class C operators. All training documentation shall verify training has been conducted in accordance with 9VAC25-580-120, and -125.		
X	Submit results of <u>2</u> months of walkthrough inspections results in accordance with 9VAC25-580-85.		Within 30 days of the date of this Order
X	Submit annual walkthrough inspections results in accordance with 9VAC25-580-85.		Within 30 days of the date of this Order

I also order Eric S. Baker, Sr. to pay a civil penalty of \$10,000, within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Should DEQ have to refer collection of the civil penalty to the Department of Law, I order Eric S. Baker, Sr. to pay attorneys' fees of 30% of the amount outstanding.

The duration of this Order shall be twelve months from the date that it is entered.

Enter this order this 21st day of March, 2023.



Michael S. Rolband
Director, Department of Environmental Quality

VIRGINIA:

IN THE DEPARTMENT OF ENVIRONMENTAL QUALITY

**IN RE: Eric S. Baker and Rick's Stop & Shop Inc.
 ("Named Party(ies)")**

RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Preliminary Statement

This case concerns whether:

- ☒ The Named Party(ies) violated certain provisions of the Virginia Code and Regulations.
- ☒ Injunctive relief is warranted for the alleged violations.
- ☒ A civil penalty is warranted for the alleged violations.

The case involves alleged violations pertaining to Underground Storage Tanks ("USTs") at the Facility identified below. DEQ staff held an Informal Fact Finding Proceeding (the "Proceeding") in this matter pursuant to Va. Code §§ 2.2-4019 and 10.1-1186 via conference call.

Preliminary Procedural Findings			
Named Party(ies)	Eric S. Baker and Rick's Stop & Shop Inc.	Facility Name	Rick's Stop & Shop Inc.
Facility Address	5321A New Kent Hwy Quinton, VA 23124	Facility Number	4003609
Notice Date	December 22, 2022	Proceeding Date	January 24, 2023
Presiding Officer	Michelle Callahan	Agency Advocate	Daniel Burstein
DEQ Witness(es)	Antonio Somoza	Named Party(ies) Representative(s)	Eric S. Baker, Sr.
DEQ Exhibits	1-25	Named Party(ies) Exhibits	
Delivery Prohibition ("DP") Decision Date	March 2, 2023	Tank(s) Subject to DP	1C, 2C, 3, 4

The Delivery Prohibition Decision issued on the date listed above (if any) and the findings of fact and conclusions of law contained therein are incorporated into these Recommended Findings of Fact and Conclusions of Law.

The following Recommended Findings of Fact and Conclusions of Law are based on the statements of the above listed participants during the Proceeding and the above listed exhibits entered into the record.

II. Findings of Fact and Conclusions of Law

A. Background Information

UST Owner	Eric. S. Baker (Owned until 3/10/22); Rick's Stop & Shop Inc. (Current Owner)	UST Operator	Chelsea Baker (Former Operator); Rick's Canteen, LLC
Inspection Date(s)	March 13, 2020, August 17, 2020, and February 22, 2022	Request for Corrective Action Date(s)	March 13, 2020
Warning Letter Date(s)	September 19, 2020	Notice of Violation Date(s)	December 2, 2020
	UST #	Regulated Substance	Volume of UST (Gallons)
	1C	Gasoline	8,000
	2C	Gasoline	4,000
	3	Diesel	3,000
	4	Diesel	3,000

B. Observations and Legal Requirements

Violation	Observations and Legal Requirements
<u>X</u>	Failed to keep required records at the Facility, readily available at an alternative site, or make them immediately available upon request. 9VAC25-580-120: Reporting and Recordkeeping
<u>X</u>	Failed to properly perform, repair, replace, test, or provide a method, or combination of methods, of release detection for tanks, and/or operation of electronic and mechanical components for USTs at the Facility. 9VAC25-580-110: Repairs Allowed 9VAC25-580-130: General Requirements for all UST Systems 9VAC25-580-140: Requirements for Petroleum UST Systems 9VAC25-580-160: Methods of Release Detection for Tanks
<u>X</u>	Failed to properly perform, repair, replace, test, or provide release detection for piping, and/or operation of electronic and mechanical components for USTs at the Facility. 9VAC25-580-110: Repairs Allowed 9VAC25-580-130: General Requirements for all UST Systems 9VAC25-580-140: Requirements for Petroleum UST Systems 9VAC25-580-170: Methods of Release Detection for Piping

Violation	Observations and Legal Requirements
	<p>Failed to provide, operate, repair, test and/or maintain corrosion protection of the UST system.</p> <p>9VAC25-580-50: Performance Standards for New UST Systems 9VAC25-580-60: Upgrading of Existing UST Systems 9VAC25-580-90: Operation and Maintenance of Corrosion Protection 9VAC25-580-110: Repairs Allowed</p>
<u>X</u>	<p>Failed to provide overfill and/or spill prevention / equipment that will prevent a release into the environment.</p> <p>9VAC25-580-50: Performance Standards for New UST Systems 9VAC25-580-60: Upgrading of existing UST Systems</p>
<u>X</u>	<p>Failed to conduct or properly conduct walkthrough inspections.</p> <p>9VAC25-580-85: Periodic operation and maintenance walkthrough inspections</p>
	<p>Failed to submit a UST notification form or an amended notification form regarding a change in ownership, tank status, tank/piping systems, or substance stored within 30 days after such change or upgrade occurs or is brought into use.</p> <p>9VAC25-580-70: Notification Requirements</p>
<u>X</u>	<p>Failed to complete the required training and/or designate Class A, Class B, and/or Class C operators and/or failed to provide written instructions or emergency procedures.</p> <p>9VAC25-580-125: Operator Training</p>
<u>X</u>	<p>Failed to properly conduct testing and/or test spill prevention equipment, overfill equipment, and/or containment sumps.</p> <p>9VAC25-580-82: Periodic Testing</p>
	<p>Failed to report a suspected release or unusual operating condition within 24 hours.</p> <p>9VAC25-580-190: Reporting of Suspected Releases 9VAC25-580-220: Reporting and Cleanup of Spills and Overfills</p>
	<p>Failed to immediately investigate and confirm all suspected releases of regulated substances requiring system test/site check and reporting within seven days.</p> <p>9VAC25-580-210: Release Investigation and Confirmation Steps</p>
	<p>Failed to contain and immediately clean up a spill or overfill that results in a release to the environment that exceeds 25 gallons or that causes a sheen on nearby surface water; and/or take immediate action to prevent further release or migration of a regulated substance; and/or failed to identify and mitigate fire, explosion and vapor hazards; and/or failed to remedy hazards posed by contaminated soils; and/or measure for a release where contamination is most likely; and/or failed to submit an initial abatement report; and/or failed to investigate and remove free product.</p> <p>9VAC25-580-220: Reporting and Cleanup of Spills and Overfills 9VAC25-580-240: Initial Response 9VAC25-580-250: Initial Abatement Measure and Site Check 9VAC25-580-270: Free Product Removal</p>
	<p>Failed to assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures.</p> <p>9VAC25-580-260: Site Characterization</p>

Violation	Observations and Legal Requirements
	Failed to notify 30 days before switching to a specified regulated substance and/or failed to demonstrate proper compatibility. 9VAC25-580-100: Compatibility
	Failed to investigate off-site impacts to determine if the UST system is the source. 9VAC25-580-200: Investigation Due to Off-Site Impacts
	Failed to submit a corrective action plan, with all necessary information, according to the required schedule, or perform corrective action to address contaminated soils and groundwater. 9VAC25-580-270: Free Product Removal 9VAC25-580-280: Corrective Action Plan
	Failed to follow the requirements to temporarily close a UST system and/or failed to keep temporarily closed UST system in compliance with requirements. 9VAC25-580-310: Temporary Closure
	Delivered or accepted a regulated substance into an ineligible UST. 9VAC25-580-370: Requirements for Delivery Prohibition
	Failed to permanently close a UST system that does not meet the new UST or UST upgrade requirements. 9VAC25-580-50: Performance Standards for New UST systems 9VAC25-580-60: Upgrading of existing UST systems 9VAC25-580-310: Temporary Closure
<u>X</u>	Failed to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs. 9VAC25-590-40: Amount and Scope of Financial Responsibility Requirement 9VAC25-590-50: Allowable Mechanisms
	Failed to maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility. 9VAC25-590-160: Recordkeeping

The Named Party(ies) violated the Underground Storage Tanks: Technical Standards and Corrective Action Requirements Regulations as specified in the Delivery Prohibition Decision (if any) and as described above.

C. Civil Penalty Recommendation

☐ No civil penalty is appropriate due to the following considerations:

☒ A civil penalty of \$10,000 is appropriate to be paid by Eric S. Baker, as the owner of the USTs during the time of the violations, due to the following considerations:

A total civil penalty of \$28,876.46 was calculated on the UST Civil Charge/Civil Penalty Worksheet (the "Worksheet") in accordance with the DEQ Civil Enforcement Manual Ch. 4, effective 12/1/2016. The civil penalty was

evaluated considering the statutory factors set forth in Va. Code § 62.1-44.34:20. The Worksheet and Penalty Explanation were introduced into the administrative record and are incorporated by reference hereto.

Penalties in orders issued under Va. Code § 10.1-1186 are limited to \$10,000. Va. Code §§ 10.1-1182, 10.1-1186.

III. Recommended Relief

I recommend that the Director issue a Special Order pursuant to Va. Code § 10.1-1186 to compel the Rick's Stop & Shop Inc., as the current registered owner of the USTs, to comply with the State Water Control Law and Regulations Specifically, I recommend that the Special Order require that the Rick's Stop & Shop Inc. take the following actions:

	Required Action	UST No(s).	Due Date
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X	Provide records for the two (2) most recent consecutive months in accordance with 9VAC25-580-120 demonstrating compliance with all release detection requirements as required in 9VAC25-580-180.	1C, 2C, 3, and 4,	Within 90 days of the date of the Special Order
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	Submit documentation that the impressed current cathodic protection system is inspected every 60 days in accordance with 9VAC25-580-90(3).		
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	Submit an updated Notification for the UST system in accordance with 9VAC25-580-70.		
	Submit documentation demonstrating financial responsibility in accordance with 9VAC25-590-10 <i>et seq.</i>		
	Submit training documentation for all the Class A, B, and C operators, including a current list of operators and written instructions or procedures for Class C operators. All training documentation shall verify training has been conducted in accordance with 9VAC25-580-120, and -125.		
X	Submit results of <u>2</u> months of walkthrough inspections results in accordance with 9VAC25-580-85.		Within 30 days of the date of the Special Order
X	Submit annual walkthrough inspections results in accordance with 9VAC25-580-85.		Within 30 days of the date of the Special Order

I also recommend that the Special Order pursuant to Va. Code § 10.1-1186 to compel Eric S. Baker, Sr. to pay a civil penalty of \$10,000, within 30-days of the effective date of the Special Order.

Respectfully submitted,



Michelle R. Callahan
Presiding Officer

March 6, 2023